



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 24, 2011

Chief Don Hatcher
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2011-04040

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412226.

The Leander Police Department (the "department") received a request for "the public information portions" of all incident detail reports, including arrests and incident narratives, from a specified period. You state you have released certain information to the requestor. You claim the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you have redacted certain information subject to section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We note, however, that Open Records Decision No. 684 does not permit a governmental body to withhold a vehicle identification number without requesting a ruling from this office. Furthermore, we note that section 552.130 does not apply to out-of-state motor vehicle record information. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code § 552.302.*

You also state you advised the requestor of certain redactions pursuant to section 552.1175(h) of the Government Code. We note, however, section 552.1175(h) pertains only to notifying a requestor of redacting information pursuant to sections 552.1175(b) and 552.1175(f) of the Government Code, not to redacting information under other exceptions in the Act.

Next, we note that much of the submitted information is not responsive to the request. The requestor seeks "the public information portions" of the incident reports at issue. We understand this request to encompass only the "basic information" portions of these reports.¹ Thus, any information outside the scope of basic information is not responsive to the request. This ruling does not address the public availability of that information, and the department need not release any non-responsive information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 58.007(c) of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

¹Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find incident numbers 110015 and 101772 involve delinquent conduct by a child or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Therefore, the department must withhold incident numbers 110015 and 101772 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the individual involved in incident number 110017 is seventeen years old and therefore not a child, as that term is defined in section 51.02(2) of the Family Code. Accordingly, section 58.007(c) does not apply to this report, and it may not be withheld on that basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information contains investigative and police methods in numerous pending investigations. However, as previously noted, the requestor seeks access to only “the public information portions” of the reports. We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. 531 S.W.2d 177. Basic information includes, but is not limited to, an identification of the complainant; the vehicles, property and premises involved; the location of the crime; a detailed description of the offense; and the names of the arresting and investigating officers. Open Records Decision No. 127 at 4–5 (1976). Consequently, the department may not withhold any of the requested information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public.² *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393, 339 (1982). Upon review, we find the information we have marked in Attachment B is highly intimate and embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). As previously noted, section 552.130 applies only to Texas motor vehicle record information and not out-of-state information. Additionally, we note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *See also* Attorney General Opinions JM-229 (1984), H-917 (1976) ; Open Records Decision No. 272 at 1 (1981). Accordingly, the department must generally withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. However, we note that one of the Texas license plate numbers at issue relates to a vehicle that was owned by an individual who is now deceased. Accordingly, the license plate number that pertains to the vehicle of the deceased individual may be withheld under section 552.130 only if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the information we have marked relating to that vehicle is not excepted from disclosure and must be released.

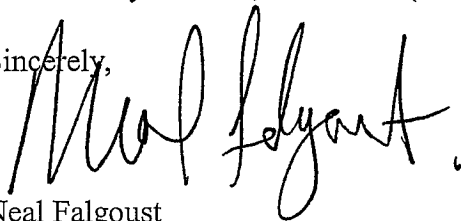
Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the credit card and bank account numbers we have marked under section 552.136 of the Government Code.

In summary, the department must withhold incident numbers 110015 and 101772 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must generally withhold the information we have marked under section 552.130 of the Government Code. However, if no living person has an interest in the motor vehicle information pertaining to the deceased individual's vehicle, then that information may not be withheld under section 552.130. The department must withhold the information we have marked under section 552.136 of the Government Code. The remaining responsive information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust", is written over the word "Sincerely,".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 412226

Enc. Submitted documents

c: Requestor
(w/o enclosures).